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HOUSE BILL 255

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Bill B. O'Neill

AN ACT

RELATING TO JUVENILE PAROLE; REMOVING THE NINETY-DAY MANDATORY PAROLE REQUIREMENT FOR SHORT-TERM AND LONG-TERM COMMITMENTS OF JUVENILES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 32A-2-19 NMSA 1978 (being Laws 1993, Chapter 77, Section 48, as amended) is amended to read:

"32A-2-19. DISPOSITION OF AN ADJUDICATED DELINQUENT OFFENDER.--

A. At the conclusion of the dispositional hearing, the court may make and include in the dispositional judgment its findings on the following:

- (1) the interaction and interrelationship of the child with the child's parents and siblings and any other person who may significantly affect the child's best interests;

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1 (2) the child's adjustment to [~~his~~] the
2 child's home, school and community;

3 (3) the mental and physical health of all
4 individuals involved;

5 (4) the wishes of the child as to [~~his~~] the
6 child's custodian;

7 (5) the wishes of the child's parents as to
8 the child's custody;

9 (6) whether there exists a relative of the
10 child or other individual who, after study by the department,
11 is found to be qualified to receive and care for the child;

12 (7) the availability of services recommended
13 in the predisposition report; and

14 (8) the ability of the parents to care for the
15 child in the home.

16 B. If a child is found to be delinquent, the court
17 may impose a fine not to exceed the fine that could be imposed
18 if the child were an adult and may enter its judgment making
19 any of the following dispositions for the supervision, care and
20 rehabilitation of the child:

21 (1) transfer legal custody to the department,
22 an agency responsible for the care and rehabilitation of
23 delinquent children, which shall receive the child at a
24 facility designated by the secretary of the department as a
25 juvenile reception facility. The department shall thereafter

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1 determine the appropriate placement, supervision and
2 rehabilitation program for the child. The judge may include
3 recommendations for placement of the child. Commitments are
4 subject to limitations and modifications set forth in Section
5 32A-2-23 NMSA 1978. The types of commitments include:

6 (a) a short-term commitment of one year
7 in a facility for the care and rehabilitation of adjudicated
8 delinquent children [~~No more than nine months shall be served~~
9 ~~at the facility and no less than ninety days shall be served on~~
10 ~~parole, unless: 1) a petition to extend the commitment has~~
11 ~~been filed prior to the commencement of parole; 2) the~~
12 ~~commitment has been extended pursuant to Section 32A-2-23 NMSA~~
13 ~~1978; or 3) parole is revoked pursuant to Section 32A-2-25 NMSA~~
14 ~~1978];~~

15 (b) a long-term commitment for no more
16 than two years in a facility for the care and rehabilitation of
17 adjudicated delinquent children [~~No more than twenty-one months~~
18 ~~shall be served at the facility and no less than ninety days~~
19 ~~shall be served on parole, unless: 1) parole is revoked~~
20 ~~pursuant to Section 32A-2-25 NMSA 1978; or 2) the commitment is~~
21 ~~extended pursuant to Section 32A-2-23 NMSA 1978];~~

22 (c) if the child is a delinquent
23 offender who committed one of the criminal offenses set forth
24 in Subsection I of Section 32A-2-3 NMSA 1978, a commitment to
25 age twenty-one, unless sooner discharged; or

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1 (d) if the child is a youthful offender,
2 a commitment to age twenty-one, unless sooner discharged;

3 (2) place the child on probation under those
4 conditions and limitations as the court may prescribe;

5 (3) place the child in a local detention
6 facility that has been certified in accordance with the
7 provisions of Section 32A-2-4 NMSA 1978 for a period not to
8 exceed fifteen days within a three-hundred-sixty-five-day time
9 period; or if a child is found to be delinquent solely on the
10 basis of Paragraph (3) of Subsection A of Section
11 32A-2-3 NMSA 1978, the court shall only enter a judgment
12 placing the child on probation or ordering restitution or
13 imposing a fine not to exceed the fine that could be imposed if
14 the child were an adult or any combination of these
15 dispositions; or

16 (4) if a child is found to be delinquent
17 solely on the basis of Paragraph (2), (3) or (4) of Subsection
18 A of Section 32A-2-3 NMSA 1978, the court may make any
19 disposition provided by this section and may enter its judgment
20 placing the child on probation and, as a condition of
21 probation, transfer custody of the child to the department for
22 a period not to exceed six months without further order of the
23 court; provided that this transfer shall not be made unless the
24 court first determines that the department is able to provide
25 or contract for adequate and appropriate treatment for the

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1 child and that the treatment is likely to be beneficial.

2 C. When the child is an Indian child, the Indian
3 child's cultural needs shall be considered in the dispositional
4 judgment, and reasonable access to cultural practices and
5 traditional treatment shall be provided.

6 D. A child found to be delinquent shall not be
7 committed or transferred to a penal institution or other
8 facility used for the execution of sentences of persons
9 convicted of crimes.

10 E. Whenever the court vests legal custody in an
11 agency, institution or department, it shall transmit with the
12 dispositional judgment copies of the clinical reports,
13 predisposition study and report and other information it has
14 pertinent to the care and treatment of the child.

15 F. Prior to any child being placed in the custody
16 of the department, the department shall be provided with
17 reasonable oral or written notification and an opportunity to
18 be heard.

19 G. In addition to any other disposition pursuant to
20 Subsection B of this section, the court may make an abuse or
21 neglect report for investigation and proceedings as provided
22 for in the Abuse and Neglect Act. The report may be made to a
23 local law enforcement agency, the department or a tribal law
24 enforcement or social service agency for an Indian child
25 residing in Indian country.

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1 H. In addition to any other disposition pursuant to
2 this section or any other penalty provided by law, if a child
3 fifteen years of age or older is adjudicated delinquent on the
4 basis of Paragraph (2), (3) or (4) of Subsection A of Section
5 32A-2-3 NMSA 1978, the child's driving privileges may be denied
6 or the child's driver's license may be revoked for a period of
7 ninety days. For a second or a subsequent adjudication, the
8 child's driving privileges may be denied or the child's
9 driver's license revoked for a period of one year. Within
10 twenty-four hours of the dispositional judgment, the court may
11 send to the motor vehicle division of the taxation and revenue
12 department the order adjudicating delinquency. Upon receipt of
13 an order from the court adjudicating delinquency, the director
14 of the motor vehicle division of the taxation and revenue
15 department may revoke or deny the [~~delinquent's~~] delinquent
16 child's driver's license or driving privileges. Nothing in
17 this section may prohibit the delinquent child from applying
18 for a limited driving privilege pursuant to Section 66-5-35
19 NMSA 1978 or an ignition interlock license pursuant to the
20 Ignition Interlock Licensing Act, and nothing in this section
21 precludes the [~~delinquent's~~] delinquent child's participation
22 in an appropriate educational, counseling or rehabilitation
23 program.

24 I. In addition to any other disposition pursuant to
25 this section or any other penalty provided by law, when a child

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1 is adjudicated delinquent on the basis of Paragraph (6) of
2 Subsection A of Section 32A-2-3 NMSA 1978, the child shall
3 perform the mandatory community service set forth in Section
4 30-15-1.1 NMSA 1978. When a child fails to [~~completely~~]
5 perform the mandatory community service completely, the name
6 and address of the child's parent or legal guardian shall be
7 published in a newspaper of general circulation, accompanied by
8 a notice that [~~he~~] the parent or legal guardian is the parent
9 or legal guardian of a child adjudicated delinquent for
10 committing graffiti."

11 Section 2. Section 32A-2-23 NMSA 1978 (being Laws 1993,
12 Chapter 77, Section 52, as amended) is amended to read:

13 "32A-2-23. LIMITATIONS ON DISPOSITIONAL JUDGMENTS--
14 MODIFICATION--TERMINATION OR EXTENSION OF COURT ORDERS.--

15 A. A judgment transferring legal custody of an
16 adjudicated delinquent child to an agency responsible for the
17 care and rehabilitation of delinquent children divests the
18 court of jurisdiction at the time of transfer of custody,
19 unless the transfer of legal custody is for a commitment not
20 exceeding fifteen days pursuant to the provisions of
21 Section 32A-2-19 NMSA 1978, in which case the court retains
22 jurisdiction, and:

23 (1) the juvenile parole board pursuant to the
24 Juvenile Parole Board Act has the exclusive power to parole or
25 release the child, subject to the provisions of Section 32A-7-8

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1 NMSA 1978;

2 (2) the supervision of a child after release
3 under Paragraph (1) of this subsection shall be conducted by
4 the department; and

5 (3) the period of time a child absconds from
6 parole or probation supervision shall toll all time limits for
7 the requirement of filing a petition to revoke probation or
8 parole and shall toll the computation of the period of
9 probation or parole supervision pursuant to the provisions of
10 the Delinquency Act.

11 B. A judgment of probation or protective
12 supervision shall remain in force for an indeterminate period
13 not to exceed the term of commitment from the date entered.

14 C. A child shall be released by an agency and
15 probation or supervision shall be terminated by juvenile
16 probation and parole services or the agency providing
17 supervision when it appears that the purpose of the order has
18 been achieved before the expiration of the period of the
19 judgment. A release or termination and the reasons therefor
20 shall be reported promptly to the court in writing by the
21 releasing authority.

22 D. Prior to the expiration of a short-term
23 commitment of one year, as provided for in Section 32A-2-19
24 NMSA 1978, the court may extend the judgment for up to one six-
25 month period if the court finds that the extension is necessary

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1 to safeguard the welfare of the child or the public safety.

2 ~~[If a short-term commitment is extended, the mandatory ninety-~~
3 ~~day parole, as required by Section 32A-2-19 NMSA 1978, shall be~~
4 ~~included in the extension.]~~ Notice and hearing are required for
5 any extension of a juvenile's commitment.

6 E. Prior to the expiration of a long-term
7 commitment, as provided for in Section 32A-2-19 NMSA 1978, the
8 court may extend the judgment for additional periods of one
9 year until the child reaches the age of twenty-one if the court
10 finds that the extension is necessary to safeguard the welfare
11 of the child or the public safety. ~~[If a long-term commitment~~
12 ~~is extended, the mandatory ninety-day parole, as required by~~
13 ~~Section 32A-2-19 NMSA 1978, shall be included in the~~
14 ~~extension.]~~ Notice and hearing are required for any extension
15 of a juvenile's commitment.

16 F. Prior to the expiration of a judgment of
17 probation, the court may extend the judgment for an additional
18 period of one year until the child reaches the age of twenty-
19 one if the court finds that the extension is necessary to
20 protect the community or to safeguard the welfare of the child.

21 G. The court may dismiss a motion if it finds after
22 preliminary investigation that the motion is without substance.
23 If the court is of the opinion that the matter should be
24 reviewed, it may, upon notice to all necessary parties, proceed
25 to a hearing in the manner provided for hearings on petitions

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1 alleging delinquency. The court may terminate a judgment if it
2 finds that the child is no longer in need of care, supervision
3 or rehabilitation or it may enter a judgment extending or
4 modifying the original judgment if it finds that action
5 necessary to safeguard the child or the public interest.

6 H. A child may make a motion to modify a children's
7 court or adult disposition within thirty days of the judge's
8 decision. If the court is of the opinion that the matter
9 should be reviewed, it may, upon notice to all necessary
10 parties, proceed to a hearing in the manner provided for
11 hearings on petitions alleging delinquency."

12 Section 3. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2009.